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Appellate Court Upholds Reformation of Policy and Insurance Law 3420(d) Preclusion

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In the recent case of *Wesco Ins. Co v. Fulmont Mut. Ins. Co.*, *2023 Slip Op 02600 (1st Dept.)*, the New York Appellate Division, First Department upheld the New York Supreme Court's reformation of a policy to include additional insured coverage for the record owner at the time of the injury, even though the record owner was not listed as an additional insured on the tenant's policy. The underlying action at issue involved a personal injury occurring at 501 West 173rd Street, New York New York. The tenant agreed in its lease to name the then owner of the building, SS2284 LLC, as an additional insured. The SS2284 LLC conveyed the premises to 501 West 173 Street, LLC and the tenant's policy was updated to replace SS2284 LLC with 501 West ("501 West") as the additional insured. However, prior to the underlying incident, 501 West conveyed the property to Beyond 501 West SPE, LLC ("Beyond"), but the tenant's policy was not updated.

After the underlying incident occurred, Beyond tendered for coverage, and the tenant's carrier, Fulmont, disclaimed based on the ground that Beyond was not an insured or additional insured under the policy. Beyond responded that the failure to update the owner's name was an innocent mistake and that the tenant's policy should be reformed. The Supreme Court held, and the appellate court upheld, that the tenant's policy should be reformed to replace the prior owner with Beyond. The court found that the circumstances clearly established that the tenant's policy was always meant to extend coverage to the building owner as an additional insured, citing cases holding that the name of the insured in the policy is not dispositive if the intent to cover the risk is clear.

The court also held that the tenant's carrier's attempt to raise the application of a vicarious liability exclusion for the first time in its answer to the complaint was time barred by New York Insurance Law 3420(d).

The case illustrates the growing case law in New York holding that, for premises liability cases, the actual name of the insured is relatively unimportant if the intent to cover the premises is clear.

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